

UIIdaho Law Digital Commons @ UIIdaho Law

Not Reported

Idaho Supreme Court Records & Briefs

3-22-2016

State v. Andoe Respondent's Brief Dckt. 43364

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/not_reported

Recommended Citation

"State v. Andoe Respondent's Brief Dckt. 43364" (2016). *Not Reported*. 2596.
https://digitalcommons.law.uidaho.edu/not_reported/2596

This Court Document is brought to you for free and open access by the Idaho Supreme Court Records & Briefs at Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Not Reported by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	No. 43364
Plaintiff-Respondent,)	
)	Jerome Co. Case No.
v.)	CR-2009-7429
)	
JOHNNY RAY ANDOE,)	
)	
Defendant-Appellant.)	

BRIEF OF RESPONDENT

**APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF JEROME**

HONORABLE ROBERT J. ELGEE
District Judge

LAWRENCE G. WASDEN
Attorney General
State of Idaho

PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division

MARK W. OLSON
Deputy Attorney General
Criminal Law Division
P. O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534

**ATTORNEYS FOR
PLAINTIFF-RESPONDENT**

JOHNNY R. ANDOE
Inmate #98609
I.S.C.C., G 120 A
P. O. Box 70010
Boise, Idaho 83707

**PRO SE
DEFENDANT-APPELLANT**

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE	1
Nature of the Case.....	1
Statement of Facts and Course of the Proceedings	1
ISSUE.....	5
ARGUMENT	6
Andoe Has Failed To Show That The District Court Erred By Denying His I.C.R. 35(a) Motion To Correct An Illegal Sentence.....	6
A. Introduction	6
B. Standard Of Review	6
C. The District Court Did Not Err In Denying Andoe's I.C.R. 35(a) Motion.....	6
CONCLUSION.....	11
CERTIFICATE OF MAILING	12

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>North Carolina v. Alford</u> , 400 U.S. 25 (1970)	1
<u>State v. Andoe</u> , Docket No. 39023, 2012 Unpublished Opinion No. 435 (Idaho App., April 5, 2012).	2, 10
<u>State v. Andoe</u> , Docket No. 41769, 2014 Unpublished Opinion No. 750 (Idaho App., October 2, 2014)	3, 11
<u>State v. Avelar</u> , 129 Idaho 700, 931 P.2d 1218 (1997)	8
<u>State v. Clements</u> , 148 Idaho 82, 218 P.3d 1143 (2009)	6, 7
<u>State v. Coassolo</u> , 136 Idaho 138, 30 P.3d 293 (2001)	8
<u>State v. Denny</u> , 122 Idaho 563, 835 P.2d 1374 (Ct. App. 1992)	8
<u>State v. Goodlett</u> , 139 Idaho 262, 77 P.3d 487 (Ct. App. 2003)	9
<u>State v. Jakoski</u> , 139 Idaho 352, 79 P.3d 711 (2003)	6
<u>State v. Lute</u> , 150 Idaho 837, 252 P.3d 1255 (2011)	6
 <u>OTHER AUTHORITIES</u>	
<u>In The Matter Of The Application For A Writ of Habeas Corpus</u> <u>On Behalf of Johnny R. Andoe</u> , Ada County District Court Case No. CV-HC-2012-09697	2
<u>In The Matter Of The Application For A Writ of Habeas Corpus</u> <u>On Behalf of Johnny R. Andoe</u> , Ada County District Court Case No. CV-HC-2013-16868)	2
<u>In The Matter Of The Application For A Writ Of Habeas Corpus</u> <u>On Behalf Of Johnny Ray Andoe</u> , Jerome County District Court Case No. CV-2013-01119	2
<u>Johnny Ray Andoe v. State of Idaho</u> , Jerome County District Court Case No. CV-2012-00407	2
<u>Johnny Ray Andoe v. State of Idaho</u> , Jerome County District Court Case No. CV-2013-00383	2

RULES

I.C.R. 35(a).....passim

STATEMENT OF THE CASE

Nature of the Case

Johnny Ray Andoe appeals from the district court's denial of his I.C.R. 35(a) motion to correct an illegal sentence.

Statement of Facts and Course of the Proceedings

In 2009, the state charged Andoe with first-degree kidnapping, penetration by a foreign object, and two counts of felony domestic battery for conduct perpetrated by Andoe against his wife. (#39023¹ R., pp.76-78.) After being committed to the Department of Health and Welfare for approximately two months, Andoe was found competent to proceed. (#39023 R., pp.231-233, 242-243.) Subsequently, pursuant to a binding Rule 11 plea agreement, Andoe entered Alford² pleas to an amended charge of second-degree kidnapping and to one count of felony domestic battery. (#39023 R., pp.276-280; #39023 Tr., p.4, L.14 – p.35, L.14.) The state agreed to dismiss the remaining charges. (#39023 R., pp.276-280; #39023 Tr., p.4, L.14 – p.9, L.25.) The state also agreed to recommend that the trial court impose an aggregate 20-year sentence with 10 years fixed, but to suspend the sentences and retain jurisdiction. (#39023 R., pp.276-280; #39023 Tr., p.4, L.14 – p.9, L.25.)

Consistent with the plea agreement, the trial court imposed a unified 20-year sentence with 10 years fixed for second-degree kidnapping and a

¹ On July 30th, 2015, the Idaho Supreme Court entered an order augmenting the record with the Clerk's Records and Reporter's Transcripts filed electronically with the Court in Andoe's prior appeals, Docket Nos. 39023 and 41769. (7/30/15 Order.)

² North Carolina v. Alford, 400 U.S. 25 (1970).

concurrent 10-year fixed sentence for domestic battery. (#39023 R., pp.313-320; #39023 Tr., p.57, L.17 – p.58, L.24.) The court suspended the sentences and retained jurisdiction. (#39023 R., pp.313-319; #39023 Tr., p.57, L.17 – p.58, L.24.) Following the period of retained jurisdiction, the trial court relinquished jurisdiction without a hearing. (#39023 R., pp.324-328.) Andoe then filed an I.C.R. 35(b) motion for the reduction of sentence, and a motion for appointment of counsel to assist him on the motion. (#39023 R., pp.337-345.) The trial court denied both motions. (#39023 R., pp.351-355.) The Idaho Court of Appeals affirmed the trial court. State v. Andoe, Docket No. 39023, 2012 Unpublished Opinion No. 435 (Idaho App., April 5, 2012).

Over the next several years, Andoe filed two state post-conviction petitions and three state habeas petitions. (See Idaho Data Repository, Johnny Ray Andoe v. State of Idaho, Jerome County District Court Case No. CV-2012-00407; Johnny Ray Andoe v. State of Idaho, Jerome County District Court Case No. CV-2013-00383; In The Matter Of The Application For A Writ Of Habeas Corpus On Behalf Of Johnny Ray Andoe, Jerome County District Court Case No. CV-2013-01119; In The Matter Of The Application For A Writ of Habeas Corpus On Behalf of Johnny R. Andoe, Ada County District Court Case No. CV-HC-2012-09697; In The Matter Of The Application For A Writ of Habeas Corpus On Behalf of Johnny R. Andoe, Ada County District Court Case No. CV-HC-2013-16868.) The district court ultimately denied or dismissed each of these petitions. (See *Id.*)

In August 2012, Andoe filed a second I.C.R. 35 motion. (#41769 R., pp.24-27.) Over the next several months, Andoe filed hundreds of pages of additional *pro se* documents in which he raised a variety of arguments regarding his conviction and sentence. (#41769 R., pp.28-587.) The district court appointed counsel to represent Andoe to assist him in pursuing an I.C.R. 35(a) illegal sentence claim, and prohibited Andoe from filing further *pro se* documents while he was represented by counsel. (R., p.82; #41769 R., pp.588-593.)

Through appointed counsel, Andoe ultimately filed a third I.C.R. 35(a) motion, in which he argued that his sentence was illegal because his guilty plea was unknowing and involuntary. (#41769 R., pp.601-608.) At a subsequent hearing, Andoe requested his sentence be vacated and that he be permitted to withdraw his guilty plea. (#41769 Tr., p.37, L.17 – p.38, L.9.) After the hearing, the district court denied the motion, concluding that the issues raised by Andoe went beyond the scope of an I.C.R. 35(a) motion to correct an illegal sentence, and that the sentences were legal on the face of the record. (#41769 R., pp.615-616; #41769 Tr., p.41, L.4 – p.45, L.13.) The Idaho Court of Appeals affirmed the district court on this same ground. State v. Andoe, Docket No. 41769, 2014 Unpublished Opinion No. 750 (Idaho App., October 2, 2014).

In February 2015, Andoe filed a fourth I.C.R. 35 motion. (R., pp.4-20.) Andoe argued that his sentence was illegal because: (1) the district court relinquished jurisdiction without granting him the opportunity to appear at a hearing; (2) the district court relinquished jurisdiction without permitting him to rebut information contained in the Amended Pre-Sentence Investigation Report

“APSI”); (3) the district court’s decision to relinquish jurisdiction violated the I.C.R. 11 plea agreement and Andoe should have therefore been permitted to withdraw his guilty plea; and (4) the district court decided to relinquish jurisdiction “merely because [Andoe] suffers from some form of mental defect.” (Id.)

The district court denied Andoe’s I.C.R. 35(a) motion without a hearing. (R., pp.42-44.) After noting Andoe’s numerous prior filings, the court stated that it “[would] not entertain repetitive motions for relief.” (Id.) The court also requested that the Administrative District Judge consider issuing a vexatious litigant pre-filing order against Andoe. (R., pp.40-41.) Andoe timely appealed the district court’s denial of his I.C.R. 35 motion. (R., pp.91-94.)

ISSUE

Andoe's brief does not contain a statement of issues on appeal as required by I.A.R. 35(a)(4).

The state phrases the issue on appeal as:

Has Andoe failed to show that the district court erred by denying his I.C.R. 35(a) motion to correct an illegal sentence?

ARGUMENT

Andoe Has Failed To Show That The District Court Erred By Denying His I.C.R. 35(a) Motion To Correct An Illegal Sentence

A. Introduction

Andoe appeals from the district court's order denying his I.C.R. 35(a) motion to correct an illegal sentence. (See generally Appellant's brief.) A review of the applicable law reveals that I.C.R. 35(a) is not the proper mechanism for the challenges Andoe attempted to raise. Therefore, he cannot show that the district court erred in denying this motion.

B. Standard Of Review

"As a general matter, it is a question of law as to whether a sentence is illegal or was imposed in an illegal fashion, and this Court exercises free review over questions of law." State v. Lute, 150 Idaho 837, 839, 252 P.3d 1255, 1257 (2011) (citing State v. Clements, 148 Idaho 82, 84, 218 P.3d 1143, 1145 (2009)).

C. The District Court Did Not Err In Denying Andoe's I.C.R. 35(a) Motion

"Absent a statute or rule extending its jurisdiction, the trial court's jurisdiction to amend or set aside a judgment expires once the judgment becomes final, either by expiration of the time for appeal or affirmance of the judgment on appeal." State v. Jakoski, 139 Idaho 352, 355, 79 P.3d 711, 714 (2003).

Idaho Criminal Rule 35(a) is a narrow rule that allows a trial court to correct a sentence that is illegal from the face of the record any time. Clements, 148 Idaho at 84, 218 P.3d at 1145. "[T]he term 'illegal sentence,' as utilized by

I.C.R. 35(a) is narrowly interpreted as a sentence that is illegal from the face of the record, i.e., does not involve significant questions of fact or require an evidentiary hearing.” Id. at 86, 218 P.3d at 1147. Rule 35(a) “is not a vehicle designed to reexamine the facts underlying the case to determine whether a sentence is illegal.” Id. (citation omitted). “[R]ather, the rule only applies to a narrow category of cases in which the sentence imposes a penalty that is simply not authorized by law or where new evidence tends to show that the original sentence was excessive.” Id.

In this case, Andoe filed an I.C.R. 35(a) motion which challenged the district court’s decision to relinquish jurisdiction in his case. (R., pp.4-20.) Specifically, Andoe argued: (1) the district court relinquished jurisdiction without permitting him to attend a hearing; (2) the district court relinquished jurisdiction without permitting him to rebut information contained in the APSI; (3) the district court’s decision to relinquish jurisdiction violated the binding Rule 11 plea agreement; and (4) the district court decided to relinquish jurisdiction “merely because [Andoe] suffers from some form of mental defect.” (Id.)

The district court denied the motion, concluding that it “[would] not entertain repetitive motions for relief.” (R., pp.42-44.) The state construes the district court’s denial order as concluding that, just as was the case with Andoe’s prior motion under the rule, I.C.R. 35(a) is not the proper mechanism for the challenges Andoe attempted to raise. In any event, because the legality of a sentence is a question of law given free review on appeal, see Section I.B., *supra*, this Court may affirm the district court’s order on any correct legal theory,

see, e.g., State v. Avelar, 129 Idaho 700, 704, 931 P.2d 1218, 1222 (1997) (where the lower court reaches the correct result by a different theory, the appellate court will affirm the order on the correct theory). Andoe's assertions also fail on their merits.

Andoe's claim that the district court relinquished jurisdiction without permitting him to attend a hearing is not a challenge to the legality of his sentence, but to the manner in which the court made its determination to relinquish jurisdiction. Thus, the claim is beyond the scope of a proper I.C.R. 35(a) motion. In any event, a defendant is not entitled to a hearing before the district court relinquishes jurisdiction after a period of retained jurisdiction. State v. Coassolo, 136 Idaho 138, 141-143, 30 P.3d 293, 296-298 (2001); State v. Denny, 122 Idaho 563, 564, 835 P.2d 1374, 1375 (Ct. App. 1992) (citations omitted). Andoe's additional assertion that a rider review hearing was held and that he simply was not permitted to attend is likewise both a challenge to the manner in which the court relinquished jurisdiction, and belied by the record. (See #39023 R., pp.324-328.)

Andoe's claim that the district court relinquished jurisdiction without permitting him to rebut information contained in the APSI is not a challenge to the legality of his sentence, but to the manner in which the court made its determination to relinquish jurisdiction. Thus, the claim is beyond the scope of a proper I.C.R. 35(a) motion. In any event, a defendant does not have a due process right to rebut the information contained within an APSI before the district

court relinquishes jurisdiction after a period of retained jurisdiction. State v. Goodlett, 139 Idaho 262, 263-265, 77 P.3d 487, 488-490 (Ct. App. 2003).

Andoe's claim that the district court's decision to relinquish jurisdiction violated the Rule 11 agreement entered into by the parties is not a challenge to the legality of the sentence, but to the validity of his guilty plea and to the manner in which the court made its determination to relinquish jurisdiction. A determination of the merits of this claim would require a re-examination of the facts underlying the case and the plea agreement. Thus, the claim is beyond the scope of a proper I.C.R. 35(a) motion. In any event, a review of the record reveals that the district court did not violate the Rule 11 agreement. Pursuant to the agreement, the parties requested that the district court impose a sentence of no more than 10 years fixed and 10 years indeterminate, and that the court either place Andoe on probation *or* retain jurisdiction. (#39023 R., pp.276-280; #39023 Tr., p.4, L.14 – p.9, L.25.) During the change of plea hearing, the court specifically informed Andoe that it agreed to be bound by the agreement, and that Andoe would be permitted to withdraw his guilty plea “only in the event that the court were to impose more than 20 years or in the event that the court did not retain jurisdiction or grant probation *at the time of sentencing.*” (#39023 Tr., p.18, Ls.11-17 (emphasis added).) The agreement did not compel the court to place Andoe on probation *after* the period of retained jurisdiction. Therefore, after the district court decided to relinquish jurisdiction and order the original sentence executed, Andoe was not permitted to withdraw his guilty plea.

Finally, Andoe's claim that the district court decided to relinquish jurisdiction "merely because [Andoe] suffers from some form of mental defect" is likewise not a challenge to the legality of the sentence, but instead addresses the rationale utilized by the district court in determining whether to relinquish jurisdiction. Thus, the claim is beyond the scope of a proper I.C.R. 35(a) motion. In any event, a review of the record reveals that the district court considered the appropriate factors in deciding to relinquish jurisdiction. The Idaho Court of Appeals previously held that the district court did not abuse its discretion in declining to reduce Andoe's sentence following the period of retained jurisdiction. Andoe, Docket No. 39023, 2012 Unpublished Opinion No. 435. In making this determination, the Court of Appeals reviewed the APSI and quoted the district court's conclusion that "it is apparent that the defendant is unable to comply with the requirements of his programming to address his criminal thinking and behavior as well as his risk to the community based on the psychosexual evaluation prepared for disposition as well as his inability to meaningfully participate in the sex offender assessment group." Id. at pp.2-3. The district court thus appropriately considered the information contained in the APSI and the danger Andoe posed to the community in deciding to relinquish jurisdiction. Even if Andoe could bring this claim in an I.C.R. 35(a) motion, he has failed to show that the district court based its determination on improper factors or otherwise imposed an illegal sentence.

Andoe has failed to demonstrate that his sentences for second-degree kidnapping and felony domestic battery are illegal. Instead, as the Court of

Appeals has previously held, Andoe, Docket No. 41769, 2014 Unpublished Opinion No. 750 at p.2, Andoe's sentences are well within the statutory limits for these crimes, and are not otherwise contrary to applicable law. Andoe has therefore failed to show that the district court erred in denying his I.C.R. 35(a) motion.

CONCLUSION

The state respectfully requests that this Court affirm the district court's order denying Andoe's I.C.R. 35(a) motion to correct an illegal sentence.

DATED this 22nd day of March, 2016.

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 22nd day of March, 2016, I caused two true and correct copies of the foregoing RESPONDENT'S BRIEF to be placed in the United States mail, postage prepaid, addressed to:

JOHNNY R. ANDOE
INMATE #98609
I.S.C.C., G 120 A
P. O. BOX 70010
BOISE, ID 83707

/s/ Mark W. Olson
MARK W. OLSON
Deputy Attorney General

MWO/dd